IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIOL JURISDICTION

LAND ACQUISITION REFERENCE. 4 OF 1975

The Land Acquisiton Officer (7)
v/s.
1. Kishore Morarji Bhojraj
2. Arvind Narayan Kale .... Claimants

R.J. Mane, Special Land Acquistion officer.
R.M. Choksey i/b. M/s. choksey and Co. for claimant no.1.
R. Datar with S. Deshpande for claimant no.2.

CORAM: S.U. KAMDAR, J.

DATE : 24TH FEBRUARY, 2005.

P.C. :

1. The present LAR is filed under section 30 of the Land Acquisition Act, 1894 for determination of the apportionment of the compensation due and payable by the Special Land Acquisition Officer (hereinafter referred to as "the SLAO") under an award dated 20.6.1974 in respect of land acquired bearing CTS no. 1486 part of village Mulund, Taluka-Kurla in the Bombay Suburban Districts, Bombay.

2. The said land was designated for public play ground under the provisions of the Mahrastra Regional Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act") for the Bombay Municipal Corporation. On 20.10.1972 a notification was published under section 126(4) of the MRTP Act notifying the said land for acquisition. The said notification was published in Maharashtra Government Gazette, Part-I on 30.11.1972. Thereafter an erratum was issued on 28.12.1972 which was also published in the Government Gazette on 18.1.1973. The area of the land which was subject of acquisition was around 1333.63 sq.mts. The notification under section (9) was thereafter issued by the SLAO to both the claimants no.1 and 2. In reply to the said notice the claimant no.1 has filed his claim before the SLAO whereas claimant no.2 did not file any claim for compensation. On 20.6.1974 the SLAO after holding inquiry under section 9 of the Land Acquisition act made an award. A compensation is awarded of sum of Rs.10,44,967/- out of which an amount of Rs.15,341.26/- has been separately earmarked for the claimant no.3 who is BMC

in respect of the arrears of property taxes payable to them. On 25.6.1974 a notice was issued and pursuant to the said notice the possession of the land has been handed over on 1.7.1974 by the claimant no.1 to the SLAO. On 25.6.1974 a notice was issued under section 12(2) of the L.A. Act by the SLAO for payment of compensation. However since claimant no.2 also made a claim on the said compensation amount the SLAO has filed a present reference under section 30 on 14.1.1975. The SLAO has deposited the amount of compensation in this court and has sought a direction of the court under section 30 of the Land Acquisition Act for apportionment of the compensation amount among the rival claimants.

3. The evidence in the present case was recorded by the learned single judge on 2.4.1992 and 23.4.1992. The evidence of both the claimants no.1 and 2 have been recorded by the learned single judge. After recording the evidence the court has passed the order on 23.4.1992 in which the court has opined that the only dispute in the present case pertains to the identity of the property that is whether the land

forms part of survey no.177, hissa no.2 or not ? For the aforesaid purpose by the said order the city survey officer was directed to depute a suitable person to survey the land and after looking into the revenue and the city survey records file a report about the location of the said land under acquisition. It was also stated therein that the said survey will be carried out by giving notice to both the parties namely claimant no.1 and 2. The matter was adjourned to 25.6.1992. It is an unfortunate situation that the matter remained in cold storage right from 1992 to 2004. The matter was once again placed on board on 23.8.1994. The learned single judge, Vazifdar, J. observed on that day that the office should such a report which has been filed by the city survey officer and should submit a report to the court within one week. The matter was thereafter placed before the learned single judge on 30.8.2004 when a statement is recorded that the report is not found in the record of the court office and therefore the city survey office was directed to make the report available in accordance with the order dated 22.4.1992.

4. The matter thereafter appeared before me on 10.1.2005. The learned counsel appearing for the SLAO tendered before me a report prepared pursuant to the order dated 23.4.1992. I have taken the said report on file. In the said report a detailed map is shown in respect of court hissa no.2 of survey no.177 and a strip of land under acquisition is indicated thereon as a part and parcel of survey no.177. However the number given to the said strip of land is 1386 but the learned counsel appearing for the city survey office inter-alia pointed out there is an error. In fact the number is 1486 and not 1386. Accordingly by my order dated 10.1.2005 I directed the city survey officer to file an affidavit inter-alia stating therein that the said number mentioned as 1386 is an error and that the exact number is 1486. Pursuant thereto on 12.1.2005 an affidavit has been filed by one Arvind Mahadeo Sonawane, City survey officer inter alia affirming and clarifying that the correct CTS number of the said strip of land is 1486 and not 1386. The CTS no. 1486 is the subject matter of acquisition in the

present case.

5. I heard both the parties being claimant no.1 and 2. Claimant no.1 has on analysis of evidence pointed out to me that in fact as the title as to the land has been established by him by producing the deed of conveyance which is marked as Exhibit-1C-2 in the course of evidence. The said conveyance marked as Exhibit1C-2 indicates that the said land being strip of land has been sold by the forefathers of the claimant no.2 to the petitioner herein. The learned counsel has drawn my attention to the evidence of claimant no.1 and has in particular pointed out the following paragraph.

> " In 1941 12gunthas and 12 annas of land forming part survey no. 177 pot hissa no.2 was sold to an ancestor of mine by Arvind Kale's father Narayan Kale under Ex.1.C-2."

6. He also drew my attention to the evidence of claimant no.2 where the claimant no.2 has admitted in his evidence that the said land which has been sold by him is forming part of Exhibit-1-C-2. The learned counsel has pointed out to me the evidence of

claimant no.2 as under :

> " The portion sold under Ex.1-C-2 I now identify on Ex.2-C-5 as that covered by the letters B, Z, M, N.

7. Apart from the aforesaid oral evidence a documentary an evidence has been produced before me by claimant no.2 being Exhibit-1-C-2 which in turn stipulates that the land forming part of survey no. 177 has been sold by the forefathers of the claimant no.2 to the claimant herein. The English translation of the said portion of conveyance being Exhibit-1-C-2 evidence inter-alia reads as under :

> ". In consideration of the said amount I have sold to you absolutely, 2593 square yards of land of my personal ownership. After reserving to myself and to whomsoever I may sell my land (hereafter) all the rights to access to the lands of my ownership is S.Nos.177, 176 and 216, by pedestrian path and by traffic road though both the aforesaid roads and through other road of the ‘scheme’ I have sold to you for the purpose of road, my land forming part of plot no.79, the description thereof is as follows :-
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> . The property being land admeasuring 1551 square yards and forming part of S.No.177, situate at Mulund, Taluka South Salsette, (registration) Sub-District Bandra, District Bombay Suburban, and 1042-00 square yards o land out of S.No.216 (situate as above) Total area 2593 square yards.

8. In the aforesaid reference in view of aforesaid oral and documentary evidence the only question which was left to be determined was whether the acquired land bearing CTS no. 1486 falls in the larger plot of land bearing no. 177/2 or not ? The learned counsel has rightly therefore directed the report to be made by the City survey office which confirms the aforesaid position.

9. However the learned counsel for the claimant no.2 has contended that it is true that the land covered under CTS no. 177/2 has been sold by the forefathers of the claimant no.2 but according to him what is sold as established in the evidence is only the plots and not the strip of land which is earmarked as plot no. 1486 on the survey plan. The learned counsel in respect of the aforesaid argument has contended that in so far as the evidence is concerned it does not specifically establishes that the land which is conveyed in the evidence included the said strip of land which was under acquisition. According to him what has been conveyed in the said

evidence is only of an area of the land admeasuring 1551 sq.yds. According to him the said strip of land bearing CTS 1486 is included in the said area of 1551 sq.yds. I am unable to accept the contention of the learned counsel for the claimant no.2 because no where in the evidence either he has established or specifically identified the land actually sold by his forefathers to claimant no.1 under the said deed of conveyance. Nor he is able to establish that the land of an area of 1551 sq.yds does not include the acquired land being CTS no. 1486. In absence of any such evidence it is not possible to accept the contention of the claimant no.2. On the other hand the claimant no.1 has contended that the entire area of plot no. 177/2 has been sold. He has pointed out the documentary as well as oral evidence in support of his case. Even the claimant no.2 has admitted that what was sold is survey no.177/2 in his oral evidence. The claimant no.1 has further established that the acquired land falls within survey no.177/2 which is the larger plot of land. The said fact has been established by further independent evidence being the report of the City survey officer. In the

light of the aforesaid evidence on record I am of the opinion that the evidence produced by the claimant no.1 establishes his title to the acquired land. I am of the further opinion that on considering the oral evidence and the conveyance dated 22.12.1941 as well as the report of the city survey officer filed on record it is beyond doubt established that the entire land of CTS no. 177 (part-2) has been sold by the forefathers of the claimant no.2 to the claimant no.1 and that they are the owners in respect thereof. It is also established that the acquired land being CTS no.1486 forms a part and parcel of the said CTS no. 177 (part-2). I therefore hold that the claimant no.1 being the owners in respect of the said land are entitled to compensation. I further hold that the claimant no. 2 is not entitled to any claim of compensation as made by him. The claim of claimant no.2 is therefore liable to be rejected. I therefore make the following order on the present reference as under :

That the amount of compensation awarded by the SLAO under an Award dated 20.6.1974 will be

payable to the claimant no.1. I direct the office of Prothonotary and Senior Master to hand over the claimant no.1 the amount of compensation awarded by the SLAO under the award to him alongwith interest accrued thereon, if any. The LAR is disposed off accordingly with no order as to costs.

SD/-

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